

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MAXIMO PINEDA-BUENAVENTURA,

Defendant.

ORDER

08-cr-100-bbc

10-cv-793-bbc

Defendant Maximo Pineda-Buenaventura has filed a notice of appeal from the March 4, 2011 order denying his § 2255 motion and denying a certificate of appealability.

Defendant's notice of appeal was not accompanied by the \$455 fee for filing an appeal. 28 U.S.C. § 2253(c)(1)(A); Fed. R. App. P. 22. Therefore, I construe it as including a request for leave to proceed in forma pauperis on appeal pursuant to 28 U.S.C. § 1915. According to 28 U.S.C. § 1915(a), a defendant who is found eligible for court-appointed counsel in the district court proceedings may proceed on appeal in forma pauperis without further authorization "unless the district court shall certify that the appeal is not taken in good faith or shall find that the party is otherwise not entitled so to proceed." Although defendant had retained counsel to represent him during his criminal proceedings, he had

court-appointed counsel on his direct appeal and I do not intend to certify that this appeal is not taken in good faith. Defendant's challenge to his sentence is not wholly frivolous. A reasonable person could suppose that it has some merit. Lee v. Clinton, 209 F.3d 1025, 1026 (7th Cir. 2000).

Defendant's request for a certificate of appealability was previously denied in the March 4, 2011 order. Therefore, he will have to make a request to the court of appeals to issue such a certificate.

ORDER

IT IS ORDERED that defendant Maximo Pineda-Buenaventura's request for leave to proceed in forma pauperis on appeal is GRANTED. His request for a certificate of appealability was previously denied in the March 4, 2011 order.

Entered this 12th day of April, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge